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## Third Committee

**Summary record of the 40th meeting**
Held at Headquarters, New York, on Tuesday, 18 November 2008, at 10 a.m.

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| *Chairman:* | Mr. Majoor | (Netherlands) |
| *later:* | Mr. Peralta (Vice-Chairman) | (Paraguay) |
| *later:* | Mr. Majoor (Chairman) | (Netherlands) |

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08-60724 (E)

*The meeting was called to order at 10.30 a.m.*

**Agenda item 98: International drug control** (*continued*) (A/C.3/63/L.8/Rev.1)

*Draft resolution A/C.3/63/L.8/Rev.1: International cooperation against the world drug problem*

1. **Mr. Gonnet** (France), speaking on behalf of the European Union with reference to the adoption of draft resolution A/C.3/63/L.8/Rev.1 at the Committee's thirty-ninth meeting, said that the European Union was committed to international cooperation in dealing with the drug problem and regretted that delegations had not agreed to include in the text the notion of reducing the adverse consequences of drug abuse. First set out in the 1988 Declaration on the Guiding Principles of Drug Demand Reduction and later reinforced in General Assembly resolutions S-26/2 and 60/262, the notion was a crucial element of the global drug demand reduction strategy and therefore of efforts to combat drug addiction and HIV/AIDS, as emphasized by international organizations specialized in the subject. The European Union believed that the text should have focused on the essential aspects of the battle against drugs. The problem required a regional, international and multilateral approach, and a global effort based on the application of laws and on eradication, reduction of demand and alternative development initiatives. A proper assessment of global strategies relating to drugs was essential.

2. **Ms. Giménez-Jiménez** (Bolivarian Republic of Venezuela) said that her delegation welcomed the adoption of the draft resolution but had reservations concerning the wording of the sixth preambular paragraph and of paragraph 30. Terrorism and transnational organized crime were driven by different motives. Moreover, the two provisions in question did not give due attention to the presumption of innocence or to the guarantee of due process.

3. **Ms. Nadjaf** (Afghanistan) said that her delegation was grateful to all those delegations that had supported its position, and shared the international community's concerns. The drug problem was one of the main obstacles to both development and the establishment of the rule of law in Afghanistan. It also threatened the stability of the entire region. Her Government was determined to combat the production of and trafficking in narcotic drugs on Afghan soil and in the space of one year had made significant progress in that area, as indicated in the *World Drug Report 2008* of the United Nations Office on Drugs and Crime (UNODC). It should be recalled, however, that the Commission on Narcotic Drugs was responsible for the technical aspects of anti-drug efforts. The draft resolution sought to reinforce cooperation on a global scale and therefore called for a multilateral approach. The battle against drugs was a common and shared responsibility and therefore required action on both supply and demand. A specific reference to any country whatsoever would have distorted the spirit of the draft resolution. In informal consultations, her delegation had encouraged other delegations to take part also in the meetings of the working group responsible for drafting the General Assembly resolution on the situation in Afghanistan and to express their support for reconstruction efforts in the country. The drug problem was linked to the lack of security that prevailed in certain parts of Afghanistan. The working group's discussions sought specifically to approach the question comprehensively. In its concern for reaching a consensus, her delegation had held discussions throughout, particularly with the Russian delegation, in order to find a common position on preambular paragraph 6 bis and paragraph 44 of the draft resolution. The agreed text was a good basis for a coherent and balanced resolution.

4. **Ms. Tynybekova** (Kyrgyzstan) expressed regret that her delegation had been unable to sponsor the draft resolution before its adoption by the Committee. She hoped that the Secretariat would add Kyrgyzstan to the list of sponsors before the draft resolution's adoption by the General Assembly.

**Agenda item 39: Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions** (*continued*) (A/C.3/63/L.54, L.55 and L.58)

*Draft resolution A/C.3/63/L.54: Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees*

5. **Ms. Hassan** (Djibouti), speaking also on behalf of the Republic of Moldova, introduced the draft resolution. Reading out the two provisions of the text, she said that the Governments of Djibouti and the Republic of Moldova were determined to protect the rights and well-being of refugees and displaced persons. In view of the essential role played by the

Executive Committee of the Programme of the United Nations High Commissioner for Refugees in that regard, the two countries, which were parties to the main international and regional instruments relating to the protection of refugees and displaced persons, wished to share their experience as asylum and refuge countries with the Executive Committee. With that in mind, they had endeavoured, with the support of the Office of the United Nations High Commissioner for Refugees (UNHCR), to strengthen their capabilities. Their participation in the Executive Committee's work would enable them to collaborate even more effectively in any action taken by the international community in that regard. They counted on the support of other delegations and hoped that the draft resolution would be adopted by consensus.

6. **The Chairman** said that Angola, Ecuador, Egypt, Israel, Italy, Mauritania and the Sudan had become sponsors of the draft resolution.

*Draft resolution A/C.3/63/L.55: New international humanitarian order*

7. **Ms. Al-Zibdeh** (Jordan) introduced the draft resolution on behalf of its sponsors. Jordan had submitted the resolution since 1981 to underscore the responsibility of States to deal with emergency humanitarian situations. She highlighted the main points of the current draft resolution and expressed the hope that it would be adopted by consensus. In addition, she pointed out that delegations had agreed to delete the words "where possible" in the second and third lines of the third preambular paragraph. She hoped the oral revision would be taken into account in the final text. Lastly, she said that Benin had become a sponsor of the draft resolution.

8. **The Chairman** said that Nigeria had also become a sponsor of the draft resolution, as orally revised.

*Draft resolution A/C.3/63/L.58: Assistance to refugees, returnees and displaced persons in Africa*

9. **Mr. Dhalladoo** (Mauritius), introducing the draft resolution on behalf of the Group of African States, recalled the draft African Union Convention on the protection of and assistance to internally displaced persons in Africa, and highlighted the particular attention given to the protection of women and children. He hoped that the draft resolution would be adopted by consensus and that non-African countries would become sponsors.

10. **The Chairman** said that Azerbaijan had become a sponsor of the draft resolution.

**Agenda item 63: Right of peoples to self-determination** (*continued*) (A/C.3/63/L.50/Rev.1)

*Draft resolution A/C.3/63/L.50/Rev.1: Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*

11. **Ms. Pérez Álvarez** (Cuba), introducing the draft resolution on behalf of its sponsors, said that the annual resolution on the subject, adopted also in the Commission on Human Rights and now the Human Rights Council, enjoyed the support of most Member States. Regrettably, the text was still relevant, since certain States continued to resort to the use of mercenaries to destabilize legitimate governments or stifle equally legitimate national liberation movements. She highlighted the main provisions of the current draft resolution and drew attention to the references to the Working Group that had been added to paragraphs 9 and 13 at the suggestion of the delegation of South Africa. She urged delegations to sponsor the draft resolution and to vote in favour of it when the time came.

12. **The Chairman** said that Algeria, Côte d'Ivoire, the Dominican Republic, Liberia, Malawi, Nigeria and Sierra Leone had become sponsors of the draft resolution.

**Agenda item 39: Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions** (*continued*) (A/C.3/63/L.54)

*Draft resolution A/C.3/63/L.54: Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees*

13. **The Chairman** said that the draft resolution contained no programme budget implications and that Benin had become a sponsor.

14. *Draft resolution A/C.3/63/L.54 was adopted.*

15. **Ms. Hassan** (Djibouti), speaking also on behalf of the Republic of Moldova, thanked delegations for adopting the draft resolution by consensus.

**Agenda item 58: Report of the Human Rights Council** (*continued*) (A/C.3/63/L.47)

*Draft resolution A/C.3/63/L.47: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*

16. **Mr. Khane** (Secretary of the Committee) said that, if the draft resolution was adopted, additional requirements of $15,900 and $284,600 would be required in 2009 and 2010-2011 respectively. If the Optional Protocol entered into force in late 2009 or early 2010, the programme budget implications for the biennium 2008-2009 would be limited to the costs arising from the signing ceremony to be held in Geneva, in other words $13,700 for conference services and interpretation and $2,200 for the travel of one staff member from the Office of Legal Affairs in New York. During the biennium 2010-2011, the Committee on Economic, Social and Cultural Rights would begin receiving communications. One new post at the P-4 level would need to be created to assist that Committee in carrying out its new functions. The estimated cost of the post was $184,800 for the biennium in question. It would also be necessary to recruit an additional staff member at the P-3 level in the following biennium.

17. It was envisaged that the visits provided for under article 11 of the Optional Protocol would last at least one week and be carried out by three members of the Committee on Economic, Social and Cultural Rights, accompanied by three staff members and four interpreters. An estimated $99,800 would be needed for the two visits to be carried out in 2011. The amount under section 35 (Staff assessment) would be offset by an equivalent amount under income section 1 (Income from staff assessment).

18. No provision had been made under the programme budget for the biennium 2008-2009 to meet the additional requirements arising from the signing ceremony. The Secretariat would absorb those requirements, to the extent possible, within the provisions under sections 2 and 23 of the programme budget. It should be noted that the additional requirements for 2009 ($15,900) would be met from within existing resources of the programme budget for the biennium 2008-2009 and that the estimated requirements for the biennium 2010-2011 ($284,600) would be considered within the context of the proposed programme budget for that biennium. No additional appropriations would therefore be required as a result of the adoption of the draft resolution.

19. Lastly, he recalled that Azerbaijan, Honduras, Mongolia, Nicaragua and Venezuela (Bolivarian Republic of) had become sponsors of the draft resolution.

20. **Mr. Salgueiro** (Portugal) said that Bolivia, Burkina Faso, Cape Verde, the Dominican Republic, Indonesia and Ukraine had become sponsors of the draft resolution. The Optional Protocol established a communications procedure for alleged violations of economic, social and cultural rights similar to that already established for violations of civil and political rights. Moreover, it gave concrete meaning to the assertion that all rights were universal and interdependent and should be treated on an equal footing. He thanked non-governmental organizations (NGOs), Member States, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the members of the Committee on Economic, Social and Cultural Rights for their valuable efforts, without which the current outcome would not have been possible. The text of the Optional Protocol, which was the result of five years' work followed by consultations and negotiations, was a good compromise. While he was aware that some States were not yet in a position to accede to the instrument, he hoped that no obstacles would be placed in the way of the many States that were in favour of establishing a new mechanism for the protection and promotion of human rights. He also hoped that the Optional Protocol would enter into force in the near future. He called on all States that were committed to protecting and promoting human rights to adopt the draft resolution so that victims of violations of economic, social and cultural rights could make their voices heard.

21. **Mr. McMahan** (United States of America) said that his delegation, while not convinced that an optional protocol was needed, had participated constructively in the Working Group's deliberations and planned to join the broad consensus on the draft resolution, despite having some concerns about the final text. Economic, social and cultural rights, while just as important as civil and political rights, were nonetheless different from a legal point of view. Such differences were reflected in the text of the corresponding protocols. The International Covenant on Economic, Social and Cultural Rights provided that each State party must take steps to achieve

progressively the full realization of the rights recognized therein, to the maximum of its available resources; no such provision was made in the International Covenant on Civil and Political Rights. In addition, the latter contained provisions relating to remedies and enforcement procedures, while the former did not. It was, moreover, hard to determine whether or not economic, social and cultural rights had been satisfactorily realized. As for the right to an adequate standard of living and the right to the highest attainable standard of health, it was not easy to distinguish between cases where they had not been fully realized and cases where they had been violated.

22. The United States did not wish to stand in the way of States parties to the International Covenant on Economic, Social and Cultural Rights that chose to make use of the non-binding communications procedure set out in the Optional Protocol. It did, however, continue to believe that a committee of international experts, no matter how qualified, would struggle to examine individual complaints in a manner that was consistent with the provisions of the Covenant and respectful of the sovereign right of States to decide how they allocated the limited resources at their disposal in order to bring basic services to their populations.

23. **Ms. Hopkins** (United Kingdom) said that her delegation had a number of concerns about the draft resolution under consideration. While firmly convinced that all rights were universal, indivisible and mutually reinforcing, her delegation considered that economic, social and cultural rights, the realization of which was progressive, did not lend themselves to third party adjudication in the same way that other rights did. It therefore questioned the usefulness of an individual complaint mechanism for those rights. That a comprehensive approach had been favoured over the "à la carte" approach supported by her delegation made it even more difficult for the United Kingdom to accede to the Optional Protocol. Referring to article 8, paragraph 4, of the Optional Protocol, she said that the Committee on Economic, Social and Cultural Rights should concentrate on gross violations rather than on considering the reasonableness of the steps taken by a State party. Her delegation would also have preferred the Optional Protocol to specify that the aforementioned Committee could consider a communication only when all domestic remedies had been exhausted. The changes made to articles 1 and 2 of the Optional Protocol after the submission of the Working Group's report, meanwhile, were understood by her delegation to relate to the rights set out in Part III of the International Covenant on Economic, Social and Cultural Rights, since no rights were set out in Part II of the Covenant. When a complaint was referred to it, the Committee on Economic, Social and Cultural Rights should therefore consider whether the State in question had violated an individual right set out in Part III of the Covenant, read in conjunction with Part II of the Covenant. Furthermore, her delegation fully endorsed the decision of the Human Rights Committee not to consider violations of the right of peoples to self-determination on the grounds that it was not an individual right. The Committee on Economic, Social and Cultural Rights should take the same approach when the Optional Protocol entered into force and should refuse to consider any complaint submitted under Part I of the Covenant or to investigate any alleged violation relating to that Part. Her delegation supported the draft resolution, which represented a good compromise, but regretted that the changes made to articles 1 and 2 of the Optional Protocol reflected the opinion of one group of countries rather than that of all Member States.

24. **Mr. Staur** (Denmark) said that his delegation questioned the appropriateness of establishing an individual complaint mechanism for the Optional Protocol, since most of the rights set out in the International Covenant on Economic, Social and Cultural Rights did not have immediate legal effect and were not suited to such a mechanism. Given the nature of those rights, his delegation feared that the Committee on Economic, Social and Cultural Rights would end up functioning as a legislator and determining the allocation of States parties' resources in that sphere, when that was the responsibility of legitimately elected national democratic institutions. That said, his delegation acknowledged that a significant number of States wished to see the Optional Protocol adopted by consensus and would not therefore insist on a vote.

25. **Ms. Hoosen** (South Africa) said that civil and political rights were meaningless unless underpinned by the practical realization of economic, social and cultural rights. Her delegation would have preferred the Optional Protocol to address the transfer of competence from the Economic and Social Council to the Committee on Economic, Social and Cultural

Rights, in order to correct the current disparities between the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Her delegation had actively participated in drafting the Optional Protocol, with a view to obtaining an effective instrument for the provision of assistance to the victims of violations of economic, social and cultural rights, and, like other delegations, supported the adoption by the Committee of the Optional Protocol.

26. **Mr. Michelsen** (Norway) said that his delegation considered the implementation of economic, social and cultural rights to be as important as the implementation of civil and political rights. The International Covenant on Economic, Social and Cultural Rights had been incorporated into Norway's legal system, and its provisions therefore took precedence over domestic legislation and could be invoked directly in court. Nonetheless, his delegation considered that some of the rights set out in the Covenant were vaguely worded. Such rights had a bearing on the national distribution of economic and social wealth and did not therefore lend themselves to third party adjudication. His delegation had some concerns about interim measures and wished to stress that requests for such measures transmitted to States parties were not legally binding. It was also concerned that the Optional Protocol might lead to interference with States' broad margin of appreciation with regard to the implementation of Covenant rights and that accession to the Optional Protocol might have economic and political consequences.

27. *Draft resolution A/C.3/63/L.47 was adopted.*

28. **Mr. Díaz Bartolomé** (Argentina), recalling the principles enshrined in the 1993 Vienna Declaration and Programme of Action, said that the obligation to respect and guarantee the enjoyment of all the rights protected by international agreements applied to political, economic, social and cultural rights. His delegation had joined the consensus on the understanding that the individual complaint mechanism was not applicable to a collective right, in accordance with the well-established case law of the Human Rights Committee, which affirmed the inadmissibility of any complaint dealing with the right of peoples to self-determination enshrined in article 1 of the International Covenant on Civil and Political Rights.

29. **Mr. Ashiki** (Japan) expressed regret that the text of the Optional Protocol had been changed at the last minute, without leaving enough time for interested delegations to hold the necessary consultations. Although not fully satisfied with the draft resolution, his delegation had not objected to its adoption by consensus, given its importance and the efforts that had been made. Referring to article 2 of the International Covenant on Economic, Social and Cultural Rights, he said that the Covenant itself recognized the existing differences among States parties as to the status of implementation of the rights involved. Japan might consider becoming a party to the Optional Protocol, provided that the implementation of the individual complaint mechanism was examined more closely, in particular with regard to the rules to be established and adjustments to be made by the Committee on Economic, Social and Cultural Rights. It would also be useful to consider the extent to which the Covenant allowed for the progressive realization of those rights.

30. *Mr. Peralta (Paraguay), Vice-Chairman, took the Chair.*

31. **Ms. Laurenson** (New Zealand) said that, in the Open-ended Working Group, her delegation had sought to ensure that the scope of the Optional Protocol was specifically defined and that the individual complaint procedure did not overburden the Committee on Economic, Social and Cultural Rights or impede the periodic consideration of States parties' reports. The individual complaint mechanism instituted by the Optional Protocol would enhance that Committee's capacity to consider, in a timely and effective manner, allegations of serious human rights violations while allowing it to decide on the admissibility of complaints; her delegation hoped that the mechanism would help States carry out their obligations under the International Covenant on Economic, Social and Political Rights. She wished to place on record her view that article 8, paragraph 4, of the Optional Protocol did not give the Committee concerned any scope to second-guess the decisions of democratically elected Governments in progressively meeting their obligations under the Covenant. With regard to articles 2 and 11 of the Optional Protocol, she said that the right of peoples to self-determination was a collective right which, accordingly, could not be invoked in an individual complaint procedure. She called on the Committee on Economic, Social and Cultural Rights to follow the practice of the Human Rights Committee in

its refusal to admit communications concerning the right of peoples to self-determination set forth in article 1 of the Covenant.

32. *Mr. Majoor (Netherlands) resumed the Chair.*

33. **Ms. Janson** (Canada) said that her delegation had consistently raised concerns about the proposed communications procedure relating to economic, social and cultural rights. In particular, the Optional Protocol did not take sufficiently into account the deference that should be accorded to States' decisions on general policy and the allocation of resources. Moreover, some rights contained in the International Covenant on Economic, Social and Cultural Rights were too broadly defined to be subjected to quasi-judicial assessments. She reiterated that part I of the Covenant was not included within the scope of the Optional Protocol and, in particular, the complaint and inquiry procedures contained therein. The Committee on Economic, Social and Cultural Rights should follow the example of the Human Rights Committee and refuse to consider communications relating to article 1 of the two International Covenants, given that the right of peoples to self-determination remained subject to the State reporting process set out by the International Covenant on Economic, Social and Cultural Rights.

34. **Mr. Frommelt** (Liechtenstein) said that his delegation had joined the consensus but had not become a sponsor of the draft resolution owing to its objections to some provisions of the Optional Protocol. Notwithstanding article 2 of the Optional Protocol, which lacked clarity owing to last-minute changes, the Committee on Economic, Social and Cultural Rights could examine, under article 8, paragraph 4, communications relating not only to the rights enshrined in part III of the International Covenant on Economic, Social and Cultural Rights, but also to those contained in part II of the Covenant, including the equal right of men and women to the enjoyment of all economic, social and cultural rights. Moreover, the negative formulation in article 3, paragraph 2 (e), was not appropriate for such an important legal document. With regard to article 14, paragraph 3, of the Optional Protocol, he noted that the establishment of a trust fund linked to the individual complaint procedure would be discriminatory against States which were parties to the Covenant but had not yet accepted the Optional Protocol, and which duly submitted regular reports on the implementation of the whole Covenant. Furthermore, such a fund would have the potential for duplication with various existing funds established by United Nations agencies that could be asked to provide assistance to States under article 14, paragraphs 1 and 2. Regrettably, the inclusion of that provision had been based on opportunistic political considerations and could weaken the legal force of the Optional Protocol.

35. **Mr. Lundberg** (Finland) thanked all Member States for their constructive collaboration in the adoption of the Optional Protocol, which was a balanced text reflecting in the best possible way the compromise achieved. The Optional Protocol was an important step towards the realization of human rights. His delegation hoped that the greatest possible number of States would rapidly sign and ratify it, as Finland itself intended to do.

36. **Ms. Tomič** (Slovenia) welcomed the adoption of the draft resolution by consensus. The implementation of the Optional Protocol would serve as a way of remedying and preventing violations of economic, social and cultural rights and would help bring to light and raise awareness of abuses linked to poverty and economic, social and cultural discrimination. Her delegation commended the Optional Protocol's comprehensive scope and thanked the Chairperson of the Open-ended Working Group, the International NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the members of the Committee on Economic, Social and Cultural Rights for their contributions to the elaboration of the Optional Protocol.

37. **Mr. Vigny** (Switzerland) recalled his delegation's position that economic, social and cultural rights were a matter for national legislative bodies and that international obligations in that regard mostly concerned general policy issues. Without calling into question the provisions of the International Covenant on Economic, Social and Cultural Rights or the universality of the rights enshrined therein, his delegation felt that the mechanisms provided for in the Optional Protocol covered only rights that could be invoked by an individual; the right of peoples to self-determination was therefore excluded from the Optional Protocol's scope of application. His delegation thanked Portugal for its help in elaborating the Optional Protocol.

38. **Mr. Heissel** (Austria) expressed the hope that the Optional Protocol and the associated individual

complaint and inquiry mechanisms which his delegation had helped develop would receive the broad support they deserved. To that end, States' right to use a variety of means to meet their obligations under the International Covenant on Economic, Social and Cultural Rights must be respected. He thanked the members and Chairperson of the Open-ended Working Group for bearing in mind that principle.

39. **Ms. Banzon-Abalos** (Philippines) said that the adoption of the Optional Protocol would no doubt fortify the international normative framework for economic, social and cultural rights, on the understanding that the Optional Protocol must be interpreted in the light of the International Covenant on Economic, Social and Cultural Rights, in particular the provisions of article 2 relating to the progressive realization of rights. Her delegation continued to believe that it was for her Government to determine national priorities and objectives with regard to the development and allocation of resources to allow for the full realization of the economic, social and cultural rights of Philippine citizens.

40. **Ms. Grabianowska** (Poland) said that quasi-judicial procedures were not well-suited to the enforcement of many economic, social and cultural rights, because they invited rulings based on the political preferences of the members of the Committee on Economic, Social and Cultural Rights rather than on strict law. Accordingly, her delegation would not consider any case law which that Committee might develop under the Optional Protocol as being applicable to States that chose not to become parties to the Protocol. Lastly, her delegation regretted that the text had been altered after the last meeting of the Open-ended Working Group, substantially broadening the catalogue of rights to be covered by the Optional Protocol. That practice was not in accord with the Working Group's mandate, under which the text of the Optional Protocol was to have been negotiated by the group.

41. **Mr. Şen** (Turkey) said that his delegation had not objected to the compromise text elaborated in Geneva but would have preferred the opt-out approach to have been maintained in article 2 of the Optional Protocol, thereby allowing States to expand the range of rights covered by the individual complaint procedure progressively over time. His delegation would also have preferred maintaining the compromise reached in the Working Group on the limited approach in articles 2 and 11. It was Turkey's understanding that the right of peoples to self-determination was conferred upon peoples and could therefore not be invoked through an individual complaint mechanism.

42. **Ms. Kreibich** (Germany) said that, as a sponsor of the draft resolution, her delegation welcomed its adoption by consensus and thanked the Chairperson of the Working Group for her tireless efforts. Given that human rights were individual, persons should be able to bring complaints of violations of their fundamental rights, including economic, social and cultural rights, before an independent international body. It was the direct responsibility of States to ensure the realization of all economic, social and cultural rights, although some aspects of those rights could be realized only progressively. She was particularly pleased to see that an individual complaint mechanism for all those rights had been established in the Optional Protocol.

43. **Mr. Bennwik** (Sweden) said that his delegation was not convinced that giving the Committee on Economic, Social and Cultural Rights the power to consider individual complaints relating to the International Covenant on Economic, Social and Cultural Rights was the best way to promote those rights. His delegation had joined the consensus on the draft resolution but regretted that some of the views held by it and other delegations had not been taken into account. In particular, it would have preferred a more precise definition of the criteria for receiving and considering complaints, taking into account the nature of economic, social and cultural rights, the principle of non-discrimination and the need to avoid overburdening the Committee on Economic, Social and Cultural Rights. His delegation had, moreover, consistently opposed the idea of giving that Committee responsibilities relating to international assistance and cooperation, since doing so would lead to duplication with existing mechanisms and would distract that Committee from its primary function.

44. **Ms. Ernst** (Australia) said that, like the Human Rights Committee, the Committee on Economic, Social and Cultural Rights should not be able to be seized of complaints of violations of a collective right, including the right of peoples to self-determination. Moreover, according to article 4 of the Optional Protocol, the Committee on Economic, Social and Cultural Rights might reject spurious complaints and focus on cases where the author had suffered a clear disadvantage. Serious issues of general importance, meanwhile,

should be addressed through the reporting mechanism set out in articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights and the inquiry procedure established in articles 11 and 12 of the Optional Protocol, not through the individual complaint procedure. Lastly, her delegation attached great importance to article 8, paragraph 4, of the Optional Protocol, by virtue of which the Committee on Economic, Social and Cultural Rights must respect the right of States parties to decide on the measures to be adopted and the resources to be allocated for the progressive implementation of the rights set forth in the Covenant.

45. **The Chairman** asked whether delegations wished to transmit the Committee's recommendation concerning the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to the General Assembly for its consideration in plenary meeting on 10 December 2008.

46. *It was so decided.*

**Agenda item 62: Elimination of racism and racial discrimination** (*continued*)

**(a) Elimination of racism and racial discrimination, xenophobia and related intolerance** (*continued*) (A/C.3/63/L.49)

*Draft resolution A/C.3/63/L.49: Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance*

47. **Mr. Khane** (Secretary of the Committee) read out a number of oral revisions that the Russian delegation had made to the draft resolution at the time of its introduction. In the sixth line of paragraph 2, the word "or" had been replaced by the word "and". In paragraph 12, the words "within existing resources" had been inserted after the words "to prepare". Moreover, he recalled that Belarus, Cape Verde, Côte d'Ivoire, Ethiopia, Kazakhstan, Nicaragua, Nigeria, South Africa and Turkmenistan had become sponsors of the draft resolution.

48. **The Chairman** said that the draft resolution contained no programme budget implications.

49. **Mr. Lukiyantsev** (Russian Federation) said that, although 70 years had passed since the beginning of the Second World War, it was still important to combat all forms of racism, discrimination, xenophobia and intolerance and condemn any attempt to rewrite history and glorify the Nazis. He proposed that, in the fourth line of paragraph 6, after the words "anti-Hitler coalition", the word "or" should be replaced by the word "and", to align the wording with that of paragraph 2, as orally revised on 11 November.

50. **The Chairman** said that Angola, the Dominican Republic, Iraq, Myanmar and Namibia had become sponsors of the draft resolution, as orally revised. He also informed the Committee that a recorded vote had been requested.

51. **Mr. Lukiyantsev** (Russian Federation) asked which delegation had requested a recorded vote on the draft resolution.

52. **The Chairman** said that the recorded vote had been requested by the delegation of the United States.

53. **Mr. Gonnet** (France), speaking on behalf of the European Union; the candidate countries Croatia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania and Montenegro; and, in addition, the Republic of Moldova and Ukraine, said that the European Union remained strongly committed to the global fight against racism, racial discrimination, xenophobia and intolerance. Neo-Nazism was a particularly abhorrent manifestation of racism and xenophobia and must be firmly combated by all. Regrettably, neo-Nazism persisted in many societies, including in European Union countries and countries that had sponsored the draft resolution. The threat of neo-Nazism must be tackled within efforts to eliminate all forms of racism and xenophobia, through effective measures at the regional, national and international levels and, in particular, through the full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action.

54. The ideas that neo-Nazism sought to undermine — in particular, that all men and women were born free and equal in dignity and rights — were at the core of what the United Nations stood for. Combating neo-Nazism and other manifestations of racism and xenophobia must therefore be a common priority. For those reasons, the European Union had expressed a strong desire to participate actively in informal consultations with the main sponsors of the draft resolution with a view to finding ways to ensure that it provided a real and serious response to

contemporary forms of racism, racial discrimination, xenophobia and intolerance. It was regrettable that it had not been possible to consider the draft resolution in greater detail and that the main sponsors had been reluctant to take into account the concerns raised by the European Union and other delegations.

55. As in previous years, the draft resolution had a selective and unsubstantiated focus which disregarded and deflected attention from those concerns. The European Union had proposed that the draft resolution should adopt a more comprehensive, objective and legally appropriate approach that could provide real added value to the global fight against racism, racial discrimination, xenophobia and intolerance. It would have liked the draft resolution's inaccurate citations of the Judgement of the Nuremberg Tribunal to have been rectified.

56. Another matter of concern related to the view taken in the draft resolution for addressing such practices. The European Union fully agreed on the need to combat all forms of racism, racial discrimination, xenophobia and intolerance. However, to be effective, such efforts must be in line with articles 4 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and could not undermine human rights and fundamental freedoms as defined by international law. That fundamental principle should have been given greater consideration in the draft before the Committee.

57. In the draft resolution, the Special Rapporteur was requested to report to the General Assembly and the Human Rights Council on the implementation of the resolution. That the Special Rapporteur had already been requested to report regularly to the Council and the Assembly should enable him to address contemporary forms of racism, racial discrimination and xenophobia in a comprehensive manner. The request contained in the draft resolution went against that comprehensive approach. For those reasons, the European Union would abstain from voting on the draft resolution.

58. **Mr. McMahan** (United States) urged delegations to vote against the draft resolution. His delegation shared the repugnance of the draft resolution's sponsors and of other Committee members at attempts to glorify and promote neo-Nazi ideology, but considered that freedom of expression, however unpleasant its manifestations, must be protected. The draft resolution went too far in that it failed to distinguish between action and statements that were covered by the right to freedom of expression and actions and statements that incited violence and should therefore be prohibited.

59. *A recorded vote was taken on draft resolution A/C.3/63/L.49, as orally revised.*

*In favour*:

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Paraguay, Peru, Philippines, Qatar, Russian Federation, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

*Against*:

United States of America.

*Abstaining*:

Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Equatorial Guinea, Estonia, Fiji, Finland, France,

Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Samoa, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tuvalu, Ukraine, United Kingdom of Great Britain and Northern Ireland.

60. *Draft resolution A/C.3/63/L.49, as orally revised, was adopted by 122 votes to 1, with 54 abstentions.*

61. **Mr. Toder** (Ukraine) said that his delegation had abstained from voting on draft resolution A/C.3/63/L.49 on the grounds that it failed to condemn neo-Stalinism, even though the latter glorified a regime that had led, inter alia, to the destruction of key ethnic groups, including Crimean Tatars, Karaites, Chechens, Dagestanians, Ukrainians, Estonians, Latvians, Lithuanians and Poles. Moreover, neo-Stalinism, which was currently spreading, introduced dangerous attitudes of intolerance, xenophobia and anti-Semitism into modern society.

**Agenda item 63: Right of peoples to self-determination** (*continued*) (A/C.3/63/L.48)

*Draft resolution A/C.3/63/L.48: Universal realization of the right of peoples to self-determination*

62. **Mr. Khane** (Secretary of the Committee) recalled that Cameroon, the Congo, the Libyan Arab Jamahiriya, Mali, Namibia, Somalia and Thailand had become sponsors of the draft resolution.

63. **The Chairman** said that the draft resolution contained no programme budget implications.

64. **Mr. Tarar** (Pakistan) said that the fact that the resolution on the right of peoples to self-determination had been adopted by consensus every year since first presented in the 1980s epitomized the General Assembly's consistent reaffirmation of the central importance of that right, which was enshrined in the Charter of the United Nations. Noting that Liberia had become a sponsor of the draft resolution, he expressed the hope that the resolution would once again be adopted by consensus.

65. **Mr. Khane** (Secretary of the Committee) said that the Central African Republic, the Comoros, Guinea, Iraq and Ukraine had also become sponsors of the draft resolution.

66. *Draft resolution A/C.3/63/L.48 was adopted.*

67. **Mr. Díaz Bartolomé** (Argentina) said that his delegation supported the right to self-determination of peoples living under colonial domination or foreign occupation, in accordance with General Assembly resolutions 1514 (XV) and 2625 (XXV). However, the text of the draft resolution just adopted must be interpreted and applied in accordance with the relevant resolutions of the General Assembly and of the Special Committee on Decolonization concerning the special situation in the Malvinas Islands. He referred, in particular, to resolution 2065 (XX) and subsequent resolutions, in which the Assembly noted the existence of a dispute between the Governments of Argentina and the United Kingdom concerning sovereignty over those Islands and invited those Governments to proceed without delay with negotiations with a view to finding a just, peaceful and lasting solution to the problem, bearing in mind the interests of the population of the Islands.

68. **Mr. Gonnet** (France), speaking on behalf of the European Union and the candidate countries Croatia and Turkey, said that the right of peoples to self-determination was a fundamental principle of public international law that remained relevant in the current international context. Moreover, it was closely associated with the strengthening of international peace and with respect for all human rights and fundamental freedoms, democracy and the rule of law, including the principle of equality of citizens. Respect for that right implied the holding of free, regular and transparent elections within the framework of a democratic society.

69. The scope of the draft resolution just adopted remained too narrow. The European Union would have preferred the draft resolution to reflect more clearly the need for the right to self-determination to be exercised in accordance with international law. In addition, the text contained inaccuracies with regard to international law. The right to self-determination, as stated in the international covenants, referred to peoples, not nations. Moreover, it was incorrect to suggest that self-determination as such was a precondition for the enjoyment of other human rights. The European Union would have also preferred the draft resolution to address the right of return, in accordance with article 13, paragraph 2, of the Universal Declaration of

Human Rights. That and other omissions in the text might weaken the quality of the debate that should be taking place on such a key issue. Rather than having to make a statement setting out its concerns as in previous years, the European Union would have preferred to have the opportunity to discuss the draft with the main sponsors and other interested delegations.

70. Regrettably, the draft resolution just adopted, the text of which had barely changed in over 25 years, did not reflect recent developments, including the general recommendations and jurisprudence of treaty bodies. The European Union could only reiterate its hope that the text adopted in 2009 would encourage all States to respect their obligations in that regard and to cooperate with other Member States. It also hoped that the main sponsors of the following year's resolution would make a greater effort to address the concerns raised by some delegations.

71. **Mr. Toder** (Ukraine) said that his delegation wished to be removed from the list of sponsors.

72. **Mr. Khane** (Secretary of the Committee) said that a country's name could not be removed from the list of sponsors once the Committee had taken action on the draft resolution in question.

**Agenda item 64 : Promotion and protection of human rights** (*continued*)

**(a) Implementation of human rights instruments** (*continued*) (A/C.3/63/L.18/Rev.1 )

*Draft resolution A/C.3/63/L.18/Rev.1: Torture and other cruel, inhuman or degrading treatment or punishment*

73. **The Chairman** said that the draft resolution contained no programme budget implications.

74. **Mr. Staur** (Denmark) said that the United Nations was built on fundamental standards and principles respected by all its Members; the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment was one such principle. However, people continued to be tortured and ill-treated throughout the world, sometimes for the purposes of obtaining information, often for no reason at all. The United Nations had a duty to speak out against such practices. The draft resolution was the culmination of extensive consultations open to all delegations and reflected the effort made to take account of their concerns to the extent possible. The text of the draft also reflected the compromises reached on national preventive mechanisms, the fight against impunity, the principle of non-refoulement, and solitary confinement. Lastly, he said that Cape Verde, the Dominican Republic, Israel, Kyrgyzstan, Nicaragua and Turkey had become sponsors of the draft resolution.

75. **Mr. Khane** (Secretary of the Committee) said that Bangladesh, Belarus, Burundi, Georgia, Madagascar, Mali, Micronesia (Federated States of), the Republic of Korea, Rwanda, Senegal, Togo and Ukraine had also become sponsors of the draft resolution.

76. *Draft resolution A/C.3/63/L.18/Rev.1 was adopted.*

77. **Ms. Gendi** (Egypt) said that her delegation had been unable to join the consensus on paragraph 27 of the draft resolution, which would have the General Assembly invite the Chairperson of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, established pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to present an oral report. Such a provision was in breach of the long-standing procedures of the Committee, which had long invited the chairpersons of universal treaty bodies to report to it but never the chairperson of a subcommittee established pursuant to a protocol that was not a self-contained treaty and to which only 37 States — in other words, less than a fifth of Member States — had acceded.

78. In a spirit of flexibility, her delegation had agreed to join the consensus on the draft resolution and even to participate actively in the Committee's interactive dialogue with the Chairperson of the Subcommittee but only on the understanding that the invitation would in no way constitute a precedent and would not be repeated in connection with the Protocol in question or any other non-universal protocol. Lastly, she asked for her statement to be placed on record.

79. **Ms. Halperin** (Israel) said that Israel was proud to be a sponsor of the draft resolution just adopted; however, the attribution of customary status to concrete international norms should be considered with the utmost caution. Like other States, Israel believed that, to be part of customary international law, a rule must be systematically and uniformly applied by States parties. Her delegation therefore understood the third

preambular paragraph to refer only to those international, regional and domestic courts that had held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law. Lastly, she asked for her statement to be placed on record.

80. **Ms. Cross** (United Kingdom), expressing firm support for the draft resolution, which the United Kingdom had sponsored, said that the definition of an act or acts as acts of torture or other cruel, inhuman or degrading treatment or punishment must be based on precise facts. It also depended on the specific circumstances of each case. The draft resolution's preamble emphasized the importance of properly interpreting and implementing States' obligations with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which the term "torture" meant any act by which severe pain or suffering was intentionally inflicted on a person for such purposes as obtaining information. That definition emphasized the intention behind the act and its purpose, rather than the nature of the act itself. The specific circumstances of each case were, therefore, of critical importance. Lastly, she asked for her statement to be placed on record.

*The meeting rose at 1.05 p.m.*